IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6378 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUNDANKUMAR @ BABLU ISHWARBHAI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

Mr.Pancholi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/02/2003

ORAL JUDGEMENT

The petitioner-detenu has challenged the order dated 3.4.2002, by which he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of

Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, he is served with the grounds of detention.

There is a reference about one criminal case lodged against the petitioner at Palanpur City Police, being Guna Register No.71 of 2002, for offences punishable under Sections 66-B, 65AE, 81 and 116(2) of the Bombay Prohibition Act. The detaining authority has also considered the statements of some witnesses. However, privilege is claimed in connection with the disclosure of their names. The detaining authority has come to the conclusion that the petitioner is a well-known bootlegger and in order to prevent him from continuing his illegal activity, he is required to be detained.

The said detention order is challenged by the petitioner on various grounds. However, at the time of hearing, the petitioner has mainly relied on one ground, that the detaining authority itself has not personally verified the statement of witnesses in this connection. It is submitted that the co-detenus, who were also detained on similar grounds and on identical facts, filed Special Civil Application Nos. 4688 of 2000 and 4740 of 2002, and they were released by this Court. In paragraphs 6 of the order dated 9th July, 2002, passed in Special Civil Application Nos.4688 of 2002 and 4740 of 2002, this Court (Coram : C.K. Buch, J.) has observed as under :-

> " ... ...
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> 6. Undisputedly, in the present case, the statement of witnesses have not been verified by the authority nor it is specifically mentioned in the grounds of detention that the authority itself has tried to get satisfied about the genuineness of the apprehension expressed by the authority. This infirmity goes to the root of the validity of the order of detention. The ratio of the decision reported in the case of Zakirbhai Rahimbhai Nagori v. District Magistrate, Mehsana & Ors., reported in 1996 (1) GLH P. 300 also relevant and it helps the petitioner.
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> ... ..."

It is not in dispute that the grounds of

detention and material in the aforesaid two cases and the present case are identical and it is submitted that the petitioner is a co-detenu, along with the other two detenus, who had filed the Special Civil Applications before this Court. In the present case, the detaining authority Mr.M.K. Das has filed his affidavit-in-reply and in paragraph 12, he has stated as under :-

> " ... ...
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> 12. With respect to para 4(o) & 4(p) of the petition, I say and submit that the witnesses expressed their fear for their life and property that their names were disclosed to the petitioner detenu, before the Dy. Superintendent of Police at the time of verification of the statement and I have considered that fact and I have come to the conclusion to claim privilege under Section 9(2) not to disclose the names and their particulars of the witnesses to the petitioner detenu so as to keep safety of the witnesses in the public interest. The apprehension expressed by the witnesses found to be genuine and the satisfaction is recorded by the Dy. Superintendent of Police and same has been considered by me and after giving full thought to the same, it is required to preserve the security of life and property of the witnesses as well as the family members of the witnesses. The names and other particulars are kept secret and did not disclose to the petitioner by claiming the privileged under Section 9(2) of the Act.
>
> ... ..."

He has not stated that he himself has verified the statements of witnesses personally. It seems that he has relied upon the satisfaction arrived at by the sponsoring authority. In that view of the matter, considering the fact that this Court has released co-detenus, who were also detained under identical grounds and same facts, the petitioner is also required to be released on the same grounds, as the detaining

authority has not personally verified the statements of witnesses.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

1st February, 2003 (P.B. Majmudar, J.)

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(apj)